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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DOROTHEY HEIMBACH,  
individually and as successor in  
interest to Anthony Silva,

Plaintiff,

vs.

STANISLAUS COUNTY; and  
~~DOES 1-10~~ JUSTIN CAMARA, ZA  
XIONG, and ERIC BAVARO, in  
their individual capacities,

Defendants.

Case No. 2:23-cv-01887-DJC-KJN

**~~FIRST-SECOND~~ AMENDED  
COMPLAINT**

Federal Law Claims

1. Fourth Amendment, Unlawful Detention (42 U.S.C. § 1983)
- ~~2.~~ Fourth Amendment, Excessive Force (42 U.S.C. § 1983)
- ~~2-3.~~ Fourteenth Amendment, Denial of Familial Relationship (42 U.S.C. § 1983)
- ~~3-4.~~ Fourth Amendment, Denial of Medical Care (42 U.S.C. § 1983)
- ~~4-5.~~ Municipal Liability, Unconstitutional Custom or Policy (42 U.S.C. § 1983)
- ~~5-6.~~ Municipal Liability, Failure to Train (42 U.S.C. § 1983)
- ~~6.~~ Municipal Liability – Ratification (42 U.S.C. § 1983)
- ~~7.~~ Americans with Disabilities Act (42 U.S.C. § 12132)
- ~~7.~~ State Law Claims
- ~~8.~~ False Arrest
- ~~8-9.~~ Battery

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9,10. Negligence  
10,11. Violation of Cal. Civil Code §  
52.1

**DEMAND FOR JURY TRIAL**

1 **COMPLAINT FOR DAMAGES**

2 COME NOW Plaintiff Dorothey Heimbach for her Second Amended  
3 Complaint against Defendants Stanislaus County and Stanislaus Sheriff Deputies;  
4 Justin Camara, Za Xiong, and Eric Bavaro~~Does 1 – 10~~, sued in their individual  
5 capacities, alleging as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
8 1343(a)(3)-(4) because Plaintiff asserts claims arising under the laws of the United  
9 States, including 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of  
10 the United States Constitution.

11 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because  
12 Defendants reside in this district and all incidents, events, and occurrences giving  
13 rise to this action occurred in this district.

14 **INTRODUCTION**

15 3. On the afternoon of October 8, 2022, the ordinary life of Plaintiff  
16 Dorothey Heimbach's son, Anthony Silva, was catastrophically and irrevocably  
17 shattered. From the peaceful setting of a public gazebo emerged an episode of gut-  
18 wrenching brutality meted out by the very individuals entrusted with his protection:  
19 deputies of the Stanislaus County Sheriff's Department.

20 4. In an unjustified and excessive display of force, these deputies ~~whose~~  
21 ~~identities are yet to be ascertained~~, forcibly slammed Mr. Silva to the ground, head  
22 first. This violent act caused severe cervical fractures at the C6 and C7 vertebrae of  
23 Mr. Silva's neck. These injuries rendered Mr. Silva quadriplegic and caused ~~He~~  
24 ~~died of the injuries~~ his death one year later, on September 10, 2023.

25 5. After breaking his neck, ~~To~~ add to the severity of their misconduct,  
26 the deputies, in clear disregard for Mr. Silva's visibly deteriorating condition,  
27 proceeded to move him around—first lifting him from the ground to a park bench  
28 and later, from the bench to a picnic table. Every shift, every jostle, every moment

1 of delay in getting professional medical help intensified Mr. Silva's injuries,  
 2 exacerbating the damage to his cervical vertebrae and directly contributing to his  
 3 quadriplegia and death.

4 6. These tragic events are a direct consequence of the deeply flawed  
 5 policies and practices at the Stanislaus County Sheriff's Department. The  
 6 department's inadequate and deficient training procedures have not only failed to  
 7 prevent such instances of excessive force, but also, the department has ratified the  
 8 unconstitutional conduct of their officers time and time again.

#### 9 **PARTIES**

10 7. At all relevant times, Decedent Anthony Silva was an individual  
 11 residing in the City of Riverbank, California.

12 8. Plaintiff Dorothey Heimbach is an individual ~~who was~~ residing in  
 13 Riverbank, California. She is the natural mother of Mr. Silva; she sues under  
 14 federal and state law in her individual capacity and as successor-in-interest to Mr.  
 15 Silva. Plaintiff is Mr. Silva's successor-in-interest pursuant to California Code of  
 16 Civil Procedure §§377.30 and 377.60.

17 9. Stanislaus County is a political subdivision of the State of California,  
 18 and in doing the acts alleged was acting as such, rather than as an "arm of the state"  
 19 for Eleventh Amendment immunity purposes.

20 10. Stanislaus County is responsible for the actions, omissions, policies,  
 21 procedures, practices, and customs of its various agents and agencies, including the  
 22 Stanislaus County Sheriff's Department and its agents and employees. At all  
 23 relevant times, Stanislaus County was responsible for assuring that the actions,  
 24 omissions, policies, procedures, practices, and customs of the Stanislaus County  
 25 Sheriff's Department and its employees and agents complied with the laws of the  
 26 United States and of the State of California. At all relevant times, Stanislaus  
 27 County was the employer of Defendants Justin Camara, Za Xiong, and Eric Bavaro  
 28 ~~Does 1-10~~ ("Defendant ~~Does~~ Defendant Deputies").

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11. ~~Defendant Does 1-6 (“Deputy Does”)~~Defendant Deputies are deputy sheriffs working for the Stanislaus County Sheriff’s Department. At all relevant times, ~~Do~~Deputies~~they~~ were acting under color of law within the course and scope of their duties as sheriff’s deputies for the Stanislaus County Sheriff’s Department. ~~The Deputy Does~~Defendant Deputies were acting with the complete authority and ratification of their principal, Stanislaus County.

~~12. Defendant Does 7-10 (“Supervisor Does”) are managerial, supervisory, and policymaking employees of the Stanislaus County Sheriff’s Department, who were acting under color of law within the course and scope of their duties as managerial, supervisory, and policymaking employees for the Stanislaus County Sheriff’s Department. Supervisor Does were acting with the complete authority and ratification of their principal, Stanislaus County.~~

~~13.~~12. On information and belief, ~~the Defendant Does~~Defendant Deputies were residents of the County of Stanislaus.

~~14. In doing the acts and failing and omitting to act as hereinafter described, the Deputy Does were acting on the implied and actual permission and consent of the Supervisor Does.~~

~~15.~~13. In doing the acts and failing and omitting to act as hereinafter described, ~~all Defendant Does~~Defendant Deputies were acting on the implied and actual permission and consent of Stanislaus County.

~~16. The true names and capacities, whether individual, corporate, association, or otherwise of Defendant Does are unknown to Plaintiff, who otherwise would not sue these Defendants by such fictitious names. Plaintiff will seek leave to amend her complaint to show the true names and capacities of these Defendants when they have been ascertained. Each of the fictitiously named Defendants is responsible in some manner for the conduct or liabilities alleged herein.~~

~~17.~~14. At all times mentioned herein, ~~Defendant Does~~Defendant Deputies

were the agents of Stanislaus County. Stanislaus and the Stanislaus Sheriff's Department ~~The Supervisor Does~~ had the legal duty to oversee and supervise the hiring, conduct, and employment of the ~~Deputy Does~~ Defendant Deputies.

~~18-15.~~ All of the acts complained of herein by Plaintiff against Defendants were done and performed by said Defendants. Stanislaus County ~~and the Supervisor Does~~ acted by and through ~~their its~~ authorized agents, servants, and/or employees, all of whom at all relevant times herein were acting within the course, purpose, and scope of said agency, service, and/or employment capacity. Moreover, Stanislaus Count ~~and the Supervisor Does~~ and their agents ratified all of the acts complained of herein.

~~19-16.~~ Defendant Does Defendant Deputies are sued in their individual capacities.

~~20-17.~~ On or around February 2, 2023, Mr. Silva filed comprehensive and timely claims for damages with Stanislaus County pursuant to applicable sections of the California Government Code.

~~21-18.~~ On March 16, 2023, Stanislaus County rejected the claims.

~~22-19.~~ Mr. Silva filed his timely complaint in this case on August 31, 2023. (ECF No. 1.)

~~23-20.~~ Shortly thereafter, on September 10, 2023, Mr. Silva died from his injuries.

~~24-21.~~ Plaintiff Dorothey Heimbach, Mr. Silva's mother, served her timely claims for damages with Stanislaus County pursuant to applicable sections of the California Government Code on October 6, 2023.

~~25-22.~~ As of today, Plaintiff has not received a response to her claim. And because it has been more than 45 days since service of the claim, the claim is deemed rejected by operation of law and Plaintiff may file her complaint. Gov. Code, § 945.6(a)(2).

#### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

1 26-23. On the afternoon of October 8, 2022, Decedent Anthony Silva's life  
 2 was irrevocably altered when Stanislaus County deputies unleashed a brutal  
 3 assault, leaving him quadriplegic and eventually causing his death on September  
 4 10, 2023.

5 27-24. Mr. Silva was outside the Riverbank Community Center at 3600 Santa  
 6 Fe Street, Riverbank, CA 95367, near a gazebo that is a public facility.

7 28-25. At the time of the incident, Mr. Silva was a 39-year-old man.

8 29-26. Mr. Silva is a high school graduate.

9 30-27. For several years before the incident, he had been experiencing  
 10 housing instability, ~~and he was suffering from mental illness. The Deputy Does~~  
 11 ~~were familiar with Mr. Silva, and they were aware that he suffered from mental~~  
 12 ~~illness.~~

13 31.—The Deputy Does Deputies CAMARA and XIONG  
 14 approachedsurrounded Mr. Silva and immediately executed a forceful takedown  
 15 and arrest, thought Mr. Silva offered no resistance, was not suspected of a serious  
 16 crime, and was not a threat to anyone.began harassing him, giving him orders and  
 17 speaking to him aggressively despite the fact that Mr. Silva had committed no  
 18 crime, and had a right to be where he was, on public property.

19 28.

20 29. Deputies CAMARA and XIONG The Deputy Does detained Mr. Silva  
 21 without reasonable suspicion that he had committed any crime.

22 32-30. Deputies CAMARA and XIONG led Mr. Silva to the nearby gazebo  
 23 and Deputy BAVARO met them there.

24 33-31. During their conversation with Mr. Silva, Deputy CAMARA At one  
 25 point, one of the Deputy Does became angry and forcefully slammed Mr. Silva to  
 26 head-first into the ground with help from Deputies XIONG and BAVARO.

27 34-32. The forceful takedown of Mr. Silva resulted in cervical fractures of his  
 28 C6 and C7 vertebrae. In layman's terms, Mr. Silva's neck was broken.

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1 ~~35.33.~~ Due to his broken neck, Mr. Silva could not get back to his feet. ~~Mr.~~  
2 ~~Silva immediately told the deputies, "I'm paralyzed."~~

3 ~~36.34.~~ Although Mr. Silva was clearly suffering from a severe injury, the  
4 ~~Deputy Does~~ Defendant Deputies did not promptly call paramedics.

5 ~~37.35.~~ Instead, as Mr. Silva lay on the ground, ~~Deputies CAMARA and~~  
6 ~~XIONG Defendants~~ began to move his injured body. ~~Without giving his neck any~~  
7 ~~support, First t~~ they carried his limp body to a nearby picnic table and sat him  
8 ~~upright. moved him from the ground, sitting him upright at a park bench. Then they~~  
9 ~~moved him from the bench to a picnic table.~~

10 ~~38.36.~~ Moving Mr. Silva multiple times exacerbated his neck injury, resulting  
11 in permanent quadriplegia.

12 ~~39.37.~~ The ~~Deputy Does~~ Defendant Deputies caused a delay in Mr. Silva's  
13 receipt of medical care, despite the obvious and urgent need.

14 ~~40.38.~~ At all relevant times, Mr. Silva complied with the ~~Deputy~~  
15 ~~Does~~ Defendant Deputies' commands and did not resist arrest.

16 ~~41.39.~~ At all relevant times, the ~~Deputy Does~~ Defendant Deputies had no  
17 information that Mr. Silva posed any threat of injury to anyone, nor did they have  
18 information that Mr. Silva had ~~actually~~ injured anyone.

19 ~~42.40.~~ Mr. Silva had in fact, not hurt anyone at any relevant time.

20 ~~43.41.~~ ~~At all relevant times, Defendant officers~~ Before breaking his neck, the  
21 ~~deputies did not failed to~~ warn Mr. Silva that they would begin using force against

22 him, despite it being feasible to do so, and despite Mr. Silva's compliance with the  
23 ~~Deputy Does~~ Defendant Deputies' commands.

24 ~~44.42.~~ At all relevant times, Mr. Silva posed no imminent threat of bodily  
25 harm to the ~~Deputy Does~~ Defendant Deputies or anyone else.

26 ~~45.43.~~ At all relevant times, Mr. Silva made no verbal threats to any officer  
27 or anyone else.

28 ~~46.44.~~ At all relevant times, the ~~Deputy Does~~ Defendant Deputies could

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1 observe that Mr. Silva was unarmed and had no weapons in his possession.

2 ~~47.45.~~ At all relevant times, the ~~Deputy Does~~Defendant Deputies had no  
3 information that Mr. Silva had committed a crime unrelated to the alleged  
4 shoulder-check the officer claimed to have experienced.

5 ~~48.46.~~ At all relevant times, the ~~Deputy Does~~Defendant Deputies failed to  
6 make any effort to ascertain whether Mr. Silva was suffering from a medical  
7 problem or crisis requiring urgent treatment, as was obvious and in fact the case at  
8 the time.

9 ~~49.47.~~ At all relevant times, the ~~Deputy Does~~Defendant Deputies failed to  
10 take steps to de-escalate the situation or give Mr. Silva the opportunity to cooperate  
11 with their instructions or comply with their orders prior to assaulting him.

12 ~~50.48.~~ As a result of the ~~Deputy Does~~Defendant Deputies' forceful  
13 takedown, restraint, and subsequent movement of his injured body, Mr. Silva  
14 suffered significant injuries, including a C6, C7 cervical fracture leading to  
15 permanent quadriplegia, skin abrasions on his arms, and various complications  
16 including pneumonia in both lower lobes of his lungs and blood clots.

17 ~~51.—After the incident, Mr. Silva never left the hospital. Due to the injuries~~  
18 ~~inflicted by the actions of the Deputy Does, Mr. Silva was forced to undergo~~  
19 ~~endotracheal intubation. This procedure involves inserting a flexible plastic tube~~  
20 ~~through the patient's mouth and into the windpipe, which is then connected to a~~  
21 ~~ventilator to assist in breathing. It's often required when individuals are unable to~~  
22 ~~breathe independently due to severe injury or illness.~~

23 ~~52.49.~~ After suffering from his injuries for nearly a year, Mr. Silva died on  
24 September 10, 2023. His death was caused by the ~~Deputy Does~~Defendant  
25 Deputies' inexcusable actions on August 8, 2023.

26 **FIRST CLAIM FOR RELIEF**

27 **Fourth Amendment, Unlawful Detention (42 U.S.C. § 1983)**

1 **Against ~~Defendant Does~~ JUSTIN CAMARA and ZA XIONG ~~1-10~~**

2 ~~53-50.~~ Plaintiff repeats and realleges each and every allegation in the  
3 foregoing paragraphs of this Complaint with the same force and effect as if fully set  
4 forth herein.

5 54. ~~51.~~ The ~~Deputy Does~~ Defendant Deputies detained Mr. Silva without  
6 reasonable suspicion or probable cause.

7 55. ~~52.~~ At all relevant times, ~~Defendant Does~~ Defendant Deputies acted under  
8 color of state law.

9 ~~53.~~ The ~~Deputy Does~~ Defendant Deputies unreasonably seized Mr. Silva  
10 when they surrounded and harassed him without reasonable suspicion that he had  
11 committed or was going to commit any crime.

12 ~~56.—~~

13 ~~57-54.~~ In addition, the scope and manner of the detention was unreasonable.  
14 It was not necessary to use force against Mr. Silva. It was certainly not necessary to  
15 slam him to the ground head-first, breaking his neck in two places. Moreover, it  
16 was not necessary to apply force to Mr. Silva's body after he was laying on the  
17 ground unable to move.

18 ~~58-55.~~ The conduct of the ~~Deputy Does~~ Deputies CAMARA and XIONG  
19 was done with reckless disregard for the rights and safety of Mr. Silva and  
20 therefore warrants the imposition of exemplary and punitive damages as to these  
21 defendants. As a direct result of the unreasonable detention and arrest, Mr. Silva  
22 experienced severe pain and suffering for which he is entitled to recover damages.

23 ~~59-56.~~ As a result of their misconduct, the ~~Deputy Does~~ Defendant Deputies  
24 are liable for Mr. Silva's injuries and death, either because they are directly liable,  
25 ~~were~~ integral participants in the wrongful detention and arrest, or because they  
26 failed to intervene to prevent these violations.

27 ~~60.—~~ The Supervisor ~~Does~~ were aware of Mr. Silva's status as an unhoused  
28 individual suffering from mental illness. They were aware that Stanislaus Deputies,

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1 including the Deputy Does, frequently detained Mr. Silva and similarly situated  
 2 individuals without reasonable suspicion. Their failure to properly supervise the  
 3 Deputy Does by instructing them to cease such unconstitutional behavior was a  
 4 contributing cause of Mr. Silva's injuries.

5 ~~61.57.~~ Plaintiff brings this claim as successors-in-interest to Mr. Silva and  
 6 seeks ~~wrongful death and punitive damages under this claim; survival damages~~  
 7 ~~include pre-death pain and suffering damages.~~ survival damages, including but not  
 8 limited to pre-death pain and suffering, loss of life, loss of opportunity of life, and  
 9 loss of enjoyment of life, under this claim. Plaintiff also seeks attorneys' fees and  
 10 costs under this claim.

11 ~~62.58.~~ Plaintiff ~~also~~ seeks ~~attorney's punitive damages against Deputies~~  
 12 ~~CAMARA and XIONG~~ fees and costs for this claim, pursuant to 42 U.S.C. §  
 13 1988.

## 14 **SECOND CLAIM FOR RELIEF**

### 15 **Fourth Amendment, Excessive Force (42 U.S.C. § 1983)**

16 **Against JUSTIN CAMARA, ZA XIONG, and ERIC BAVARO Defendant**

17 **Does 1–10**

18 ~~63.59.~~ Plaintiff repeats and realleges each and every allegation in the  
 19 foregoing paragraphs of this Complaint with the same force and effect as if fully set  
 20 forth herein.

21 ~~64.60.~~ The ~~Deputy Does~~ Defendant ~~Deputies~~ use of force against Mr. Silva  
 22 were excessive and unreasonable under the circumstances. They used deadly force  
 23 despite the fact that These Defendants encountered Mr. Silva who may have been  
 24 in the midst of a mental health crisis, and instead of providing the assistance he  
 25 needed, they detained and severely battered him. A at the time of the incident, Mr.  
 26 Silva offered minimal resistance to the officers, made no attempt to flee, and had  
 27 committed no serious crime.

28 61. These Defendants' uses of force were further excessive in that Mr.

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1 Silva never physically injured them or anyone else before or after the officers  
 2 assaulted him. Further, Mr. Silva never verbally threatened anyone, and never  
 3 brandished a weapon.

4 65-62. Mr. Silva was fully restrained in handcuffs and he had been searched,  
 5 so the deputies knew he did not possess any form of weapon.

6 66-63. The unreasonable use of force by the ~~Deputy Does~~ Defendant  
 7 Deputies deprived Mr. Silva of his right to be secure in his person against  
 8 unreasonable searches and seizures as guaranteed to Mr. Silva under the Fourth  
 9 Amendment to the United States Constitution and applied to state actors by the  
 10 Fourteenth Amendment.

11 67-64. As a result, Mr. Silva suffered severe pain and suffering death. The  
 12 ~~Deputy Does~~ Defendant ~~Deputies~~ are therefore liable to Plaintiff for compensatory  
 13 damages under 42 U.S.C. § 1983.

14 65. As a result of the ~~Deputy Does~~ Defendant ~~Deputies~~ conduct, they are  
 15 liable for Mr. Silva's injuries, either because they were integral participants in the  
 16 use of excessive force, or because they failed to intervene to prevent these  
 17 violations.

18 68-66. Deputies CAMARA, XIONG, and BAVARO all participated in the  
 19 deadly take-down of Mr. Silva.

20 69-67. The conduct of the ~~Deputy Does~~ Defendant ~~Deputies~~ was willful,  
 21 wanton, malicious, and done with reckless disregard for the rights and safety of Mr.  
 22 Silva and therefore warrants the imposition of exemplary and punitive damages as  
 23 to these Defendants.

24 70-68. The Supervisor ~~Does were~~ Stanislaus Sheriff Department employees,  
 25 agents and supervisors were aware of Mr. Silva's status as an unhoused individual  
 26 suffering from mental illness. They were aware that Stanislaus Deputies, including  
 27 the ~~Deputy Does~~ Defendant ~~Deputies~~, frequently used excessive force against  
 28 individuals similarly situated to Mr. Silva without justification. Their failure to

properly supervise the ~~Deputy Does~~Defendant Deputies by instructing them to cease such unconstitutional conduct was a contributing cause of their unconstitutional use of excessive force and Mr. Silva's injuries.

~~71-69.~~ Plaintiff brings this claim as successors-in-interest to Mr. Silva and seeks survival damages, including but not limited to pre-death pain and suffering, loss of life, loss of opportunity of life, and loss of enjoyment of life, under this claim. Plaintiff seeks punitive damages under this claim. ~~wrongful death and punitive damages under this claim; survival damages include pre-death pain and suffering damages.~~

~~72-70.~~ Plaintiff also seeks attorney's fees and costs for this claim, pursuant to 42 U.S.C. § 1988.

### **THIRD CLAIM FOR RELIEF**

#### **Fourth Amendment, Denial of Medical Care (42 U.S.C. § 1983)**

**Against JUSTIN CAMARA, ZA XIONG, and ERIC BAVARO**~~Defendant~~

#### **Does 1-6**

~~73-71.~~ Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

~~74-72.~~ After slamming Mr. Silva head-first into the ground, breaking his neck in two places, the ~~Deputy Does~~Defendant Deputies did not timely summon or provide medical attention to Mr. Silva.

~~75-73.~~ After being taken to the ground, Mr. Silva could not get back to his feet because his neck was broken in two places.

~~76-74.~~ Although Mr. Silva was clearly suffering from a severe injury, the ~~Deputy Does~~Defendant Deputies did not promptly call paramedics.

75. Instead, as Mr. Silva lay on the ground, Deputies CAMARA and XIONG began to move his injured body. Without giving his neck any support, they carried his limp body to a nearby picnic table and sat him upright.

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1       77. — Instead, as Mr. Silva lay on the ground, Defendants began to move his  
2 injured body. First they moved him from the ground, sitting him upright at a park  
3 bench. Then they moved him from the bench to a picnic table.

4       78-76. Moving Mr. Silva multiple times exacerbated his neck injury, resulting  
5 in permanent quadriplegia.

6       79-77. The ~~Deputy Does~~ Defendant ~~Deputies~~ therefore caused a delay in Mr.  
7 Silva's receipt of medical care, despite the obvious and urgent need.

8       80-78. The denial of medical care by the ~~Deputy Does~~ Defendant ~~Deputies~~  
9 deprived Mr. Silva of his right to be secure in his persons against unreasonable  
10 searches and seizures as guaranteed to Mr. Silva under the Fourth Amendment to  
11 the United States Constitution and applied to state actors by the Fourteenth  
12 Amendment.

13       81-79. As a result, Mr. Silva suffered severe pain and suffering and death.  
14 The ~~Deputy Does~~ Defendant ~~Deputies~~ are therefore liable to Plaintiff for  
15 compensatory damages under 42 U.S.C. § 1983.

16       82-80. The ~~Deputy Does~~ Defendant ~~Deputies~~ knew that failure to provide  
17 timely medical treatment to Mr. Silva could result in further significant injury or  
18 the unnecessary and wanton infliction of pain, but disregarded that serious medical  
19 need, exacerbating his pain and suffering.

20       83-81. The conduct of the ~~Deputy Does~~ Defendant ~~Deputies~~ was willful,  
21 wanton, malicious, and done with reckless disregard for the rights and safety of Mr.  
22 Silva and therefore warrants the imposition of exemplary and punitive damages as  
23 to these Defendants.

24       84-82. Plaintiff brings this claim as successors-in-interest to Mr. Silva and  
25 seeks wrongful death and punitive damages under this claim; survival damages  
26 include pre-death pain and suffering damages.

27       83. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to  
28 42 U.S.C. § 1988.

**FOURTH CLAIM FOR RELIEF**

**Fourteenth Amendment, Denial of Familial Relationship (42 U.S.C. § 1983)**

**Against JUSTIN CAMARA, ZA XIONG, and ERIC BAVARO**

84. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

85. DOROTHEY HEIMBACH had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive her of life, liberty, or property in such a manner as to shock the conscience, including but not limited to unwarranted state interference in DOROTHEY HEIMBACH's familial relationship with her son, Mr. Silva.

86. Defendants CAMARA, XIONG, and BAVARO acted within the course and scope of his employment as deputies for the Defendant COUNTY and acted under color of state law.

87. The aforementioned actions of Defendant Deputies shock the conscience, in that he acted with deliberate indifference to the constitutional rights of Mr. Silva and DOROTHEY HEIMBACH, and with a purpose to harm unrelated to any legitimate law enforcement objective.

88. As a direct and proximate result of these actions, Mr. Silva experienced pain and suffering and eventually died. Defendant Deputies thus violated the substantive due process rights of Plaintiff to be free from unwarranted interference with her familial relationship with Mr. Silva.

89. As a direct and proximate cause of the acts of Defendant Deputies, Plaintiff has also been deprived of the life-long love, companionship, comfort, support, society, care, and sustenance of Mr. Silva, and will continue to be so deprived for the remainder of her natural life.

90. Defendant Deputies are directly liable for Mr. Silva's injuries and

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1 death.

2 91. Plaintiffs bring this claim individually and seek wrongful death  
 3 damages for the violation of their rights. Plaintiffs also seek attorney's fees and  
 4 costs under this claim.

5 92. The conduct of Defendant Deputies was malicious, wanton,  
 6 oppressive, and carried out with conscious disregard for the rights of both the  
 7 Plaintiff's and the Mr. Silva. Defendant Deputies intentionally deprived and  
 8 violated their constitutional rights, or acted with reckless disregard for those rights.  
 9 As such, this conduct entitles the Plaintiff to an award of exemplary and punitive  
 10 damages from Defendant Deputies.

11 85.

#### 12 **FOURTH-FIFTH CLAIM FOR RELIEF**

#### 13 **Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

#### 14 **Against Stanislaus County**

15 86-93. Plaintiff repeats and realleges each and every allegation in the  
 16 foregoing paragraphs of this Complaint with the same force and effect as if fully set  
 17 forth herein.

18 87-94. As alleged above, the ~~Deputy Does~~ Defendant Deputies acted under  
 19 color of state law, and their acts deprived Mr. Silva of his particular rights under  
 20 the United States Constitution.

21 88-95. On information and belief, the ~~Deputy Does~~ Defendant Deputies were  
 22 not disciplined, reprimanded in connection with this incident.

23 89.— The ~~Deputy Does~~ Defendant Deputies, together with other Stanislaus  
 24 County policymakers and supervisors, maintained, inter alia, the following  
 25 unconstitutional customs, practices, and policies:

26 ~~Using excessive force, particularly by slamming individuals into the ground head-~~  
 27 ~~first, causing potential harm and injury;~~

28 96.

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- 1 a. Using excessive force, particularly by slamming individuals into  
2 the ground head-first, causing potential harm and injury;  
3 b. Providing inadequate training with respect to the handling of  
4 individuals, particularly in situations that could lead to head and  
5 neck injuries;  
6 c. Providing inadequate training regarding the appropriate response  
7 to neck injuries;  
8 d. Employing and retaining as deputy sheriffs individuals such as  
9 the Defendant Deputies, whom Stanislaus County at all times  
10 material herein knew or reasonably should have known had  
11 dangerous propensities for abusing their authority and for using  
12 excessive force, including head-first ground slams;  
13 e. Inadequately supervising, training, controlling, assigning, and  
14 disciplining deputies and other personnel, including the  
15 Defendant Deputies, whom Stanislaus County knew or in the  
16 exercise of reasonable care should have known had the  
17 forementioned propensities and character traits;  
18 f. have known had the aforementioned propensities and character  
19 traits;  
20 g. Maintaining grossly inadequate procedures for reporting,  
21 supervising, investigating, reviewing, disciplining and controlling  
22 misconduct by Stanislaus County deputies, particularly in relation  
23 to incidents involving head-first ground slams and inappropriate  
24 handling of neck injuries;  
25 h. Failing to adequately discipline Stanislaus County deputies for  
26 the above-referenced categories of misconduct, including  
27 inadequate responses to incidents of head-first ground slams and  
28 improper handling of neck injuries;

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i. Determining that unjustified uses of force, including head-first ground slams and improper handling of neck injuries, are within policy;

j. Even though in similar circumstances, head-first ground slams have been determined by courts to be unconstitutional, Stanislaus County refuses to discipline, terminate, or retrain the officers involved in such incidents;

k. Encouraging, accommodating, or facilitating a “blue code of silence,” pursuant to which police officers do not report other officers’ errors, misconduct, or crimes. Pursuant to this code of silence, if questioned about an incident of misconduct involving another officer, while following the code, the officer being questioned will claim ignorance of the other officers’ wrongdoing; and

l. code, the officer being questioned will claim ignorance of the other officers’ wrongdoing; and

m. Maintaining a policy of inaction and an attitude of indifference towards soaring numbers of police use-of-force incidents, including by failing to discipline, retrain, investigate, terminate, and recommend officers for criminal prosecution who participate in the use of force and restraint of unarmed people, particularly in relation to incidents involving head-first ground slams and improper handling of neck injuries.

~~i. Providing inadequate training with respect to the handling of individuals, particularly in situations that could lead to head and neck injuries;~~

~~ii. Providing inadequate training regarding the appropriate response to neck injuries;~~

~~iii. Employing and retaining as deputy sheriffs individuals such as the Deputy~~

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1 ~~Does, whom Stanislaus County at all times material herein knew or reasonably~~  
2 ~~should have known had dangerous propensities for abusing their authority and for~~  
3 ~~using excessive force, including head first ground slams;~~

4 ~~v. Inadequately supervising, training, controlling, assigning, and disciplining~~  
5 ~~deputies and other personnel, including the Deputy Does, whom Stanislaus County~~  
6 ~~knew or in the exercise of reasonable care should have known had the~~  
7 ~~aforementioned propensities and character traits;~~

8 ~~v. Maintaining grossly inadequate procedures for reporting, supervising,~~  
9 ~~investigating, reviewing, disciplining and controlling misconduct by Stanislaus~~  
10 ~~County deputies, particularly in relation to incidents involving head first ground~~  
11 ~~slams and inappropriate handling of neck injuries;~~

12 ~~v. Failing to adequately discipline Stanislaus County deputies for the above-~~  
13 ~~referenced categories of misconduct, including inadequate responses to incidents of~~  
14 ~~head first ground slams and improper handling of neck injuries;~~

15 ~~ii. Determining that unjustified uses of force, including head first ground slams~~  
16 ~~and improper handling of neck injuries, are within policy;~~

17 ~~iii. Even though in similar circumstances, head first ground slams have been~~  
18 ~~determined by courts to be unconstitutional, Stanislaus County refuses to~~  
19 ~~discipline, terminate, or retrain the officers involved in such incidents;~~

20 ~~x. Encouraging, accommodating, or facilitating a "blue code of silence,"~~  
21 ~~pursuant to which police officers do not report other officers' errors, misconduct, or~~  
22 ~~crimes. Pursuant to this code of silence, if questioned about an incident of~~  
23 ~~misconduct involving another officer, while following the code, the officer being~~  
24 ~~questioned will claim ignorance of the other officers' wrongdoing; and~~

25 ~~x. Maintaining a policy of inaction and an attitude of indifference towards~~  
26 ~~soaring numbers of police use of force incidents, including by failing to discipline,~~  
27 ~~retrain, investigate, terminate, and recommend officers for criminal prosecution~~  
28 ~~who participate in the use of force and restraint of unarmed people, particularly in~~

~~relation to incidents involving head first ground slams and improper handling of neck injuries.~~

90-97. The aforementioned acts and omissions caused Mr. Silva's physical injuries and death.

91-98. Stanislaus County, together with various other officials, whether named or unnamed, had either actual or constructive knowledge of the deficient policies, practices and customs alleged in the paragraphs above. Despite having knowledge as stated above, these defendants condoned, tolerated and through actions and inactions thereby ratified such policies. Said defendants also acted with deliberate indifference to the foreseeable effects and consequences of these policies with respect to the constitutional rights of Mr. Silva and other individuals similarly situated.

92-99. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct and other wrongful acts, Stanislaus officials acted with intentional, reckless, and callous disregard for the constitutional rights of Mr. Silva. Furthermore, the policies, practices, and customs implemented, maintained, and still tolerated by Defendant County of Stanislaus were affirmatively linked to and were a significantly influential force behind the Mr. Silva injuries and death.

93-100. Plaintiff brings this claim as successor-in-interest to Mr. Silva and seeks wrongful death and punitive damages under this claim; survival damages include pre-death pain and suffering damages.

94-101. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to 42 U.S.C. § 1988.

#### **FIFTH-SIXTH CLAIM FOR RELIEF**

#### **Municipal Liability – Failure to Train (42 U.S.C. § 1983)**

#### **Against Stanislaus County**

95-102. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set

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1 forth herein.

2 96.103. As alleged above, the ~~Deputy Does~~Defendant Deputies acted  
3 under color of state law, and their acts deprived Mr. Silva of his particular rights  
4 under the United States Constitution.

5 97.104. The training policies of Stanislaus County were not adequate to  
6 train its deputies to handle the usual and recurring situations with which they must  
7 deal.

8 98.105. Defendants Stanislaus County ~~and Supervisor Does~~through its  
9 employees and agents were deliberately indifferent to the obvious consequences of  
10 its failure to train its deputies adequately.

11 99.106. The failure of Defendants Stanislaus County and its employees  
12 and agents ~~Supervisor Does~~ to provide adequate training caused the deprivation of  
13 the decedent's rights by the ~~Deputy Does~~Defendant Deputies; that is, the  
14 defendant's failure to train is so closely related to the deprivation of the Mr. Silva's  
15 rights as to be the moving force that caused the ultimate injury.

16 100.107. By reason of the aforementioned acts and omissions caused Mr.  
17 Silva to suffer great physical harm and death.

18 101.108. Plaintiff brings this claim as successor~~s~~-in-interest to Mr. Silva  
19 and seeks wrongful death and punitive damages under this claim; survival damages  
20 include pre-death pain and suffering damages.

21 102.109. Plaintiff also seeks attorney's fees and costs for this claim,  
22 pursuant to 42 U.S.C. § 1988.

### 23 **SIXTH-SEVENTH CLAIM FOR RELIEF**

#### 24 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

#### 25 **Against Stanislaus County**

26 103.110. Plaintiff repeats and realleges each and every allegation in the  
27 foregoing paragraphs of this Complaint with the same force and effect as if fully set  
28 forth herein.

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1 ~~104.111.~~ As alleged above, the ~~Deputy Does~~Defendant Deputies acted  
 2 under color of state law, and their acts deprived Mr. Silva of his particular rights  
 3 under the United States Constitution.

4 ~~105.112.~~ Upon information and belief, a final policymaker, acting under  
 5 color of law, who had final policymaking authority concerning the acts of the  
 6 ~~Deputy Does~~Defendant Deputies ratified (or will ratify) the acts of the ~~Deputy~~  
 7 ~~Does~~Defendant Deputies and the bases for them. Upon information and belief, the  
 8 final policymaker knew of and specifically approved of (or will specifically  
 9 approve of) the acts of the ~~Deputy Does~~Defendant Deputies.

10 ~~106.113.~~ Upon information and belief, a final policymaker has  
 11 determined (or will determine) that the acts of the ~~Deputy Does~~Defendant Deputies  
 12 were “within policy.”

13 ~~107.114.~~ On information and belief, the ~~Deputy Does~~Defendant Deputies  
 14 were not disciplined, reprimanded, retrained, suspended, or otherwise penalized in  
 15 connection with this incident.

16 ~~108.115.~~ Accordingly, Stanislaus County is liable to Plaintiff for  
 17 compensatory damages under 42 U.S.C. § 1983.

18 ~~109.116.~~ Plaintiff brings this claim as successors-in-interest to Mr. Silva  
 19 and seeks wrongful death and punitive damages under this claim; survival damages  
 20 include pre-death pain and suffering damages.

21 ~~110.117.~~ Plaintiff also seeks attorney’s fees and costs for this claim,  
 22 pursuant to 42 U.S.C. § 1988.

#### 23 **SEVENTH CLAIM FOR RELIEF**

24 ~~**Americans with Disabilities Act (42 U.S.C. § 12132)**~~

25 ~~**Against Stanislaus County**~~

26 ~~111. Plaintiff repeats and realleges each and every allegation in the~~  
 27 ~~foregoing paragraphs of this Complaint with the same force and effect~~  
 28 ~~as if fully set forth herein.~~

1 ~~112. — Mr. Silva was a "qualified individual," with a mental~~  
2 ~~impairment that substantially limited his ability to care for himself and~~  
3 ~~control his mental, medical or physical health condition as defined~~  
4 ~~under the Americans with Disabilities Act (ADA), 42 U.S.C. §12131~~  
5 ~~(2), and under Section 504 of the Rehabilitation Act of 1973, 29~~  
6 ~~U.S.C. §794.~~

7 ~~113. — Stanislaus County is a covered entity for purposes of~~  
8 ~~enforcement of the ADA, 42 U.S.C. §12131 (2), and under Section~~  
9 ~~504 of the Rehabilitation Act of 1973, explicated by the regulations~~  
10 ~~promulgated under each of these laws.~~

11 ~~114. — Under the ADA, Stanislaus County is mandated to "develop an~~  
12 ~~effective, integrated, comprehensive system for the delivery of all~~  
13 ~~services to persons with mental disabilities and developmental~~  
14 ~~disabilities. . ." and to ensure "that the personal and civil rights" of~~  
15 ~~persons are protected.~~

16 ~~115. — Congress enacted the ADA upon a finding, among other things,~~  
17 ~~that "society has tended to isolate and segregate individuals with~~  
18 ~~disabilities" and that such forms of discrimination continue to be a~~  
19 ~~"serious and pervasive social problems." 42 U.S.C. §12101(a)(2).~~

20 ~~116. — Stanislaus County is mandated under the ADA not to~~  
21 ~~discriminate against any qualified individual on the basis of disability~~  
22 ~~in the full and equal enjoyment of the goods, services, facilities,~~  
23 ~~privileges, advantages, or accommodations of any place of public~~  
24 ~~accommodation." 42 U.S.C. §12182 (a).~~

25 ~~117. — Stanislaus County receives federal financial assistance for its~~  
26 ~~Sheriff's Office, and therefore must comply with the mandates of the~~  
27 ~~Rehabilitation Act, §504, which specifies that "program or activity"~~  
28 ~~means all of the operations of a department, agency, special purpose~~

district, or other instrumentality of a State or of a local government.

~~118. — Stanislaus County and other Defendants violated the ADA and the Rehabilitation Act, and deprived Mr. Silva of his federally and state protected rights by: (1) failing to properly train its deputies; dispatch staff and/or employees to peacefully respond, treat, and interact with disabled persons, such as Mr. Silva; and (2) failing to comply with the U.S. Department of Justice requirements regarding care, treatment and security to persons with mental disabilities, resulting in discrimination against Mr. Silva, under the ADA and the Rehabilitation Act.~~

~~119. — As a legal result of the acts and misconduct of the Defendants and each Defendant complained of herein, Mr. Silva suffered pain and suffering and eventual death.~~

~~120. — Plaintiff brings this claim as successors in interest to Mr. Silva and seeks wrongful death and punitive damages under this claim; survival damages include pre-death pain and suffering damages.~~

~~121. — Plaintiff also seeks attorney's fees and costs for this claim, pursuant to 42 U.S.C. § 1988.~~

## **EIGHTEIGHTH CLAIM FOR RELIEF**

### **False Arrest**

**Against JUSTIN CAMARA, ZA XIONG, and STANISLAUS COUNTY**

### **Defendants**

~~122-118.~~ Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

~~123-119.~~ The ~~Deputy Does~~ Defendants CAMARA and XIONG intentionally deprived Mr. Silva of his freedom of movement by use of force, threats of force, menace, fraud, deceit, and unreasonable duress. The ~~Deputy~~

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1 ~~Does~~Defendants CAMARA and XIONG -did not have reasonable suspicion that  
 2 Mr. Silva was engaged in any criminal activity, Mr. Silva was not engaged in any  
 3 criminal activity at any point during this incident, and he did not in any way  
 4 interfere with or obstruct ~~the CAMARA or XIONG's defendant officers'~~ duties  
 5 with respect to the incident. Mr. Silva did not knowingly or voluntarily consent to  
 6 being detained.

7 ~~124.120.~~ 124.120. At the time of the unlawful detention of Mr. Silva, the ~~Deputy~~  
 8 ~~Does~~Defendants CAMARA and XIONG -were working as Stanislaus County  
 9 deputies and were acting within the course and scope of their employment and  
 10 duties.

11 ~~125.121.~~ 125.121. As a result of their misconduct, the ~~Deputy Does~~Defendants  
 12 CAMARA and XIONG -are liable for Mr. Silva's injuries and death.

13 ~~126. The Supervisor Does were aware of Mr. Silva's status as an unhoused~~  
 14 ~~individual suffering from mental illness. They were aware that Stanislaus Deputies,~~  
 15 ~~including the Deputy Does, frequently arrested individuals similarly situated to Mr.~~  
 16 ~~Silva without probable cause. Their failure to properly supervise the Deputy Does~~  
 17 ~~by instructing them to cease such conduct was a contributing cause of Mr. Silva's~~  
 18 ~~injuries.~~

19 ~~127.122.~~ 127.122. Plaintiff brings this claim as successor~~s~~-in-interest to Mr. Silva  
 20 and seeks wrongful death and punitive damages under this claim; survival damages  
 21 include pre-death pain and suffering damages.

22 ~~128.123.~~ 128.123. Plaintiff also seeks attorney's fees and costs for this claim,  
 23 pursuant to 42 U.S.C. § 1988.

#### 24 ~~NINTH-NINTH~~ CLAIM FOR RELIEF

#### 25 **Battery**

#### 26 **Against All Defendants**

27 ~~129.124.~~ 129.124. Plaintiff repeats and realleges each and every allegation in the  
 28 foregoing paragraphs of this Complaint with the same force and effect as if fully set

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1 forth herein.

2 ~~130.~~125. ~~Deputy Does~~Defendant Deputies physically assaulted Mr. Silva  
3 causing severe injuries including permanent quadriplegia.

4 ~~131.~~126. ~~Deputy Does~~Defendant Deputies use of force against Mr. Silva  
5 were excessive and unreasonable under the circumstances. ~~These Defendants~~  
6 ~~encountered Mr. Silva who may have been in the midst of a mental health crisis,~~  
7 ~~and instead of providing the assistance he needed, they detained and severely~~  
8 ~~battered him.~~ ~~Defendants executed a forceful take-down, throwing Mr. Silva head-~~  
9 ~~first into the concrete ground, breaking his neck in two places.~~ At the time of the  
10 incident, Mr. Silva offered no more than minimal resistance to the ~~officers~~deputies,  
11 made no attempt to flee, and had committed no serious crime.

12 ~~132.—The Deputy Does, while working for the Stanislaus County Sheriff's~~  
13 ~~Department and acting within the course and scope of their duties, encountered Mr.~~  
14 ~~Silva who may have been in the midst of a mental health crisis, and instead of~~  
15 ~~providing the assistance he needed, they detained and severely physically assaulted~~  
16 ~~him. At the time of the incident, Mr. Silva offered minimal resistance to the~~  
17 ~~officers, made no attempt to flee, and had committed no serious crime.~~

18 ~~133.—The use of force and restraint against Mr. Silva was objectively~~  
19 ~~unreasonable. At all relevant times, including when the Deputy Does slammed Mr.~~  
20 ~~Silva to the ground, Mr. Silva did not pose a threat to anyone. Mr. Silva was~~  
21 ~~offering minimal resistance, and had committed no crime. Additionally, Mr. Silva~~  
22 ~~was unarmed during this incident.~~

23 ~~134.~~127. As a result of the actions of the ~~Deputy Does~~Defendant  
24 Deputies, Mr. Silva suffered severe injuries which eventually led to his death. The  
25 ~~Deputy Does~~Defendant Deputies had no legal justification for using force against  
26 Mr. Silva, and their use of force while carrying out their duties as a deputy sheriff  
27 was an unreasonable use of force.

28 ~~135.~~128. As a direct and proximate result of the conduct of the ~~Deputy~~

1 ~~Does~~Defendant Deputies as alleged above, Mr. Silva suffered significant damages  
2 related to his physical and injuries and death.

3 ~~136.129.~~ Stanislaus County is vicariously liable for the wrongful acts of  
4 the ~~Deputy Does~~Defendant Deputies pursuant to section 815.2(a) of the California  
5 Government Code, which provides that a public entity is liable for the injuries  
6 caused by its employees within the scope of the employment if the employee's act  
7 would subject her or her to liability.

8 ~~137.130.~~ Stanislaus Sheriff Department employees, agents and  
9 supervisors ~~The Supervisor Does~~ were aware of Mr. Silva's status as an unhoused  
10 individual suffering from mental illness. They were aware that Stanislaus Deputies,  
11 including the ~~Deputy Does~~Defendant Deputies, frequently unjustifiably assault  
12 individuals similarly situated to Mr. Silva. Their failure to properly supervise the  
13 ~~Deputy Does~~Defendant Deputies by instructing them to cease such conduct was a  
14 contributing cause of Mr. Silva's injuries.

15 ~~138.131.~~ The conduct of the ~~Deputy Does~~Defendant Deputies was  
16 malicious, wanton, oppressive, and accomplished with a conscious disregard for  
17 the rights of Mr. Silva, entitling him to an award of exemplary and punitive  
18 damages in addition to compensatory damages.

19 ~~139.132.~~ Plaintiff brings this claim as successor~~s~~-in-interest to Mr. Silva  
20 and seeks wrongful death and punitive damages under this claim; survival damages  
21 include pre-death pain and suffering damages.

22 ~~140.133.~~ Plaintiff also seeks attorney's fees and costs for this claim,  
23 pursuant to 42 U.S.C. § 1988.

#### 24 ~~TENTH-TENTH~~ CLAIM FOR RELIEF

#### 25 Negligence (Wrongful Death and Survival)

#### 26 Against All Defendants

27 ~~141.134.~~ Plaintiff repeats and realleges each and every allegation in the  
28 foregoing paragraphs of this Complaint with the same force and effect as if fully set

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1 forth herein.

2 ~~142.~~135. The ~~Deputy Does~~Defendant Deputies have a duty to use  
3 reasonable care to prevent harm or injury to others. This duty includes using  
4 appropriate tactics, giving appropriate commands, giving warnings, and not using  
5 any force unless necessary, using less than lethal options, and only using deadly  
6 force as a last resort.

7 ~~143.~~136. The ~~Deputy Does~~Defendant Deputies breached this duty of care.  
8 The actions and inactions of the ~~Deputy Does~~Defendant Deputies were negligent  
9 and reckless, including but not limited to:

10 ~~i.~~137. Surrounding and harassing Mr. Silva without any reasonable suspicion  
11 of a crime being committed.

12 ~~ii.~~138. Speaking to Mr. Silva aggressively and giving him orders despite his  
13 right to be on public property.

14 ~~iii.~~139. Detaining Mr. Silva without any reasonable suspicion of a  
15 crime.

16 ~~iv.~~140. Forcefully slamming Mr. Silva head-first into the ground,  
17 resulting in a broken neck.

18 ~~v.~~141. Failing to promptly call paramedics despite Mr. Silva's obvious severe  
19 injury.

20 ~~vi.~~142. Moving Mr. Silva's injured body multiple times, exacerbating  
21 his neck injury and resulting in permanent quadriplegia.

22 ~~vii.~~143. Causing a delay in Mr. Silva's receipt of medical care, despite  
23 the obvious and urgent need.

24 144. As a direct and proximate result of Defendants conduct as alleged  
25 above, and other undiscovered negligent conduct, Mr. Silva was caused to suffer  
26 severe pain and suffering and was rendered permanently quadriplegic.

27 145. Stanislaus County is vicariously liable for the wrongful acts of the  
28 ~~Deputy Does~~Defendant Deputies pursuant to section 815.2(a) of the California

1 Government Code, which provides that a public entity is liable for the injuries  
 2 caused by its employees within the scope of the employment if the employee's act  
 3 would subject her or her to liability.

4 146. ~~Stanislaus Sheriff Department employees, agents and supervisors The~~  
 5 ~~Supervisor Does~~ were aware of Mr. Silva's status as an unhoused individual  
 6 suffering from mental illness. They were aware that Stanislaus Deputies, including  
 7 the ~~Deputy Does~~ Defendant Deputies, frequently unjustifiably assault individuals  
 8 similarly situated to Mr. Silva. They were negligent in their failure to properly  
 9 supervise the ~~Deputy Does~~ Defendant Deputies by instructing them to cease such  
 10 conduct. And their negligence was a contributing cause of the ~~Deputy~~  
 11 ~~Does~~ Defendant Deputies' actions and of Mr. Silva's injuries and death.

12 147. Plaintiff brings this claim as successors-in-interest to Mr. Silva and  
 13 seeks wrongful death and punitive damages under this claim; survival damages  
 14 include pre-death pain and suffering damages.

15 148. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to  
 16 42 U.S.C. § 1988.

#### 17 **ELEVENTH CLAIM FOR RELIEF**

#### 18 **Intentional Infliction of Emotional Distress**

#### 19 **Against All Defendants**

20 149. ~~Plaintiff repeats and realleges each and every allegation in the~~  
 21 ~~foregoing paragraphs of this Complaint with the same force and effect~~  
 22 ~~as if fully set forth herein.~~

23 150. ~~The conduct of the Deputy Does, as set forth herein, was extreme and~~  
 24 ~~outrageous and beyond the scope of conduct which should be tolerated by citizens~~  
 25 ~~in a democratic and civilized society.~~

26 151. ~~Defendants committed these extreme and outrageous acts with the~~  
 27 ~~intent to inflict severe mental and emotional distress upon Mr. Silva.~~

28 152. ~~As a proximate result of Defendants' willful, intentional and malicious~~

conduct, Decedent suffered severe and extreme mental and emotional distress.

~~153. Plaintiff brings this claim as successors in interest to Mr. Silva and seeks survival damages.~~

~~154. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to 42 U.S.C. § 1988.~~

## **TWELFTELEVENTH CLAIM FOR RELIEF**

### **Violation of Cal. Civil Code § 52.1**

#### **Against All Defendants**

~~149.~~ Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

~~150.~~ California Civil Code, Section 52.1 (the Bane Act), prohibits any person from using violent acts or threatening to commit violent acts in retaliation against another person for exercising that person's constitutional rights.

~~151.~~ On information and belief, the ~~Deputy Does~~ Defendant ~~Deputies~~, while working for the Stanislaus County and acting within the course and scope of their duties, intentionally committed acts of violence against Mr. Silva, including breaking his neck by slamming him to the ground head-first, all without justification or excuse, or by integrally participating and failing to intervene in the above violence, and by denying him necessary medical care. The ~~Deputy Does~~ Defendant ~~Deputies~~' intent to violate Mr. Silva's constitutional rights is demonstrated by their reckless disregard for Mr. Silva's constitutional rights.

~~152.~~ The ~~Deputy Does~~ Defendant ~~Deputies~~' use of extreme force and subsequent mistreatment of Mr. Silva's injured body interfered with his civil rights to be free from unreasonable searches and seizures, and his right to medical care to mitigate caused by the deputies use of force.

~~153.~~ On information and belief, the ~~Deputy Does~~ Defendant ~~Deputies~~ intentionally and spitefully committed the above acts to discourage Mr. Silva from

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1 exercising his civil rights, to retaliate against him for invoking such rights, or to  
2 prevent him from exercising such rights, which he was fully entitled to enjoy.

3 +60-154. On information and belief, Mr. Silva reasonably believed and  
4 understood that the violent acts committed by the ~~Deputy Does~~ Defendant Deputies  
5 were intended to discourage him from exercising the above civil rights, to retaliate  
6 against him for invoking such rights, or to prevent him from exercising such rights.

7 +61-155. The conduct of the ~~Deputy Does~~ Defendant Deputies was a  
8 substantial factor in causing Mr. Silva's harms, losses, injuries, and death.

9 +62-156. Stanislaus County is vicariously liable for the wrongful acts of  
10 the ~~Deputy Does~~ Defendant Deputies pursuant to section 815.2(a) of the California  
11 Government Code, which provides that a public entity is liable for the injuries  
12 caused by its employees within the scope of the employment if the employee's act  
13 would subject him or her to liability.

14 +63-157. The conduct of the ~~Deputy Does~~ Defendant Deputies was  
15 willful, wanton, malicious, and done with reckless disregard for the rights and  
16 safety of Mr. Silva.

17 +64-158. Plaintiff brings this claim as successor~~s~~-in-interest to Mr. Silva  
18 and seeks wrongful death and punitive damages under this claim; survival damages  
19 include pre-death pain and suffering damages.

20 +65-159. Plaintiff also seeks attorney's fees and costs for this claim,  
21 pursuant to 42 U.S.C. § 1988.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Dorothea Heimbach requests entry of judgment in  
24 her favor and against Defendants STANISLAUS COUNTY and Stanislaus Sheriff  
25 Deputies; JUSTIN CAMARA, ZA XIONG, and ERIC BAVARO~~Does 1-10~~, as  
26 follows:

27 1. For compensatory damages according to proof at trial, including:  
28 survival damages, not limited to pre-death pain and suffering and loss life under

1 federal and state law; and wrongful death damages under federal and state law;

2 2. For funeral and burial expenses, and loss of financial support;

3 ~~3. For loss of consortium;~~

4 ~~4.3.~~ For punitive and exemplary damages against JUSTIN CAMARA, ZA

5 XIONG, and ERIC BAVARO;~~Does 1-10~~

6 ~~5.4.~~ For statutory damages;

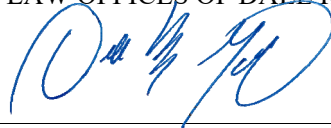
7 ~~6.5.~~ For reasonable attorneys' fees including litigation expenses;

8 ~~7.6.~~ For costs of suit and interest incurred; and

9 ~~8.7.~~ For such further other relief as the Court may deem just, proper, and  
10 appropriate.

11  
12 DATED: March 6, 2024~~February~~  
13 ~~28, 2024~~

LAW OFFICES OF DALE K. GALIPO



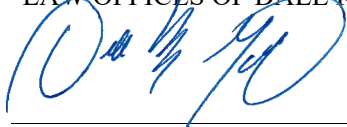
Dale K. Galipo  
*Attorney for Plaintiff*

17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury.

20  
21 DATED: March 6, 2024~~February~~  
22 ~~28, 2024~~

LAW OFFICES OF DALE K. GALIPO



Dale K. Galipo  
*Attorney for Plaintiff*



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